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Mikael Jaakola

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WARE FRESSOLA VAN DER SLUYS & ADOLPHSON, LLP

BRADFORD GREEN, BUILDING 5

755 MAIN STREET, P O BOX 224

MONROE, CT 06468

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The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* MIKAEL JAAKOLA

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Appeal 2009-008074  
Application 10/509,402  
Technology Center 2600

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Before ROBERT E. NAPPI, KENNETH W. HAIRSTON, and CARL W.  
WHITEHEAD JR., *Administrative Patent Judges*.

NAPPI, *Administrative Patent Judge*.

DECISION ON APPEAL<sup>1</sup>

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

This is a decision on appeal under 35 U.S.C. § 134(a) of the rejection of claims 1 through 26.

We affirm.

## INVENTION

The invention is directed to a personal communication device that includes two parts. One of parts is an amulet which is to be worn around the neck of a user and includes a display, the other part includes a keyboard. See page 2 of Appellant's Specification. Claim 1 is representative of the invention and reproduced below:

1. A personal telecommunication device comprising:
  - a keypad for allowing a human user to input information to the personal telecommunication device and
  - a display for displaying information to a human user of the personal telecommunication device,
  - two mechanically separate structural parts, of which a first part is a keypad part that comprises the keypad and a second part is an amulet that comprises the display,
  - a short distance communication link between said keypad part and said amulet,
  - said amulet further comprising a hanging arrangement for allowing said amulet to be worn on the torso of a human user so that the display is directed away from said human user to allow said human user to self-express himself/herself via said display of said amulet, and a microphone and an electroacoustic transducer for setting up an audio interface between the personal telecommunication device and a human user.

## REFERENCES

Mackey	US 5,956,630	Sep. 21, 1999
Marshall	US 2002/0095538 A1	Jul. 18, 2002
Morton	US 2002/0178631 A1	Dec. 5, 2002

Kanesaka	US 6,825,830 B1	Nov. 30, 2004
Adams	US 2004/0240163 A1	Dec. 2, 2004

### REJECTIONS AT ISSUE

The Examiner has rejected claims 1 through 6, 8 through 16, 23, and 24 under 35 U.S.C. § 103(a) as being unpatentable over Kanesaka in view of Marshall and Morton. Answer<sup>2</sup> 4 through 9.

The Examiner has rejected claims 17, 18, 22, 25, and 26 under 35 U.S.C. § 103(a) as being unpatentable over Marshall in view of Kanesaka and Morton. Answer 10 through 12.

The Examiner has rejected claim 7 under 35 U.S.C. § 103(a) as being unpatentable over Kanesaka in view of Marshall, Morton, and Adams. Answer 12.

The Examiner has rejected claims 19 through 21 under 35 U.S.C. § 103(a) as being unpatentable over Kanesaka in view of Marshall, Morton, and Mackey. Answer 12 and 13.

### ISSUES

Appellant's contentions on pages 4 through 7 of the Appeal Brief<sup>3</sup> present us with two issues:

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<sup>2</sup> Throughout this decision we refer to the Examiner's Answer dated August 18, 2008

<sup>3</sup> Throughout this decision we refer to the Appeal Brief dated June 19, 2008 and the Reply Brief dated October 23, 2008.

a) did the Examiner err in combining the teachings of Kanesaka, Marshall, and Morton; and

b) did the Examiner err in finding that the combined teachings of Kanesaka, Marshall, and Morton teach an amulet with a display directed away from the person to allow the person to self-express himself via the display?

### ANALYSIS

*Rejection under 35 U.S.C. § 103(a) based on Kanesaka in view of Marshall and Morton*

Appellant's arguments have not persuaded us of error in the Examiner's rejection of claims 1 through 6, 8 through 16, 23, and 24. Appellant has grouped claims 1 through 6, 8 through 16, 23, and 24 together. App. Br. 7. We select claim 1 as representative of the group. We note that Appellant in the Reply Brief separately addresses claims 8, 9, 10 11, and 12 however, this is not proper; grouping of the claims is made in the Brief. See 37 C.F.R. § 41.37. Further, these arguments have not been considered and are deemed waived. Appellant has not explained why, nor is it apparent that these arguments were necessitated by a new point in the Answer or any other circumstance constituting "good cause" for its belated presentation. *See Ex parte Borden*, 93 USPQ2d 1473, 1473-74 (BPAI 2010) ("informative")<sup>4</sup> (absent a showing of good cause, Board not required to address argument in Reply Brief that could have been presented in the principal Brief).

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<sup>4</sup> The "informative" status of this opinion is noted at the following Board website: <http://www.uspto.gov/ip/boards/bpai/decisions/inform/index.jsp>.

*First Issue.*

Appellant's arguments, on pages 5 and 6 of the Brief, center on the combination of the references, as proposed by the Examiner, rendering Kanesaka inoperative by having two speakers and two microphones. The Examiner responds on pages 13 through 16 of the Answer that the three references are in the same field of endeavor. Further, The Examiner states that:

It is a common knowledge in the art that to have a wireless (e.g. Bluetooth) headset integrated with a microphone and speaker to wirelessly communicate with mobile phone in order to provide a hand-free operation. In this case, it is clearly seen that the second information processing device 101 can be integrated with microphone and speaker to communicate with the first information processing device 100 (mobile phone) to provide a hand-free operation.

Answer 16. We concur with the Examiner's findings and note that Appellant has not cited to any evidence to support the assertion that using two speakers and two microphones makes Kanesaka's device inoperative. As identified by the Examiner, hands free devices used with telephones, such as speaker phones or ear buds, frequently make use of microphones separate from the body of the phone. Thus, Appellant's arguments directed to the first issue have not persuaded us that the Examiner erred in combining the teachings of Kanesaka, Marshall, and Morton.

*Second Issue.*

Appellant's arguments have not persuaded us that the Examiner erred in finding that the combined teachings of Kanesaka, Marshall, and Morton teach an amulet with a display directed away from the person to allow the person to self-express himself via the display. Appellant argues that the information displayed by Morton's display is for medical personal and not

self-expression. Br 6, Rep. Br. 3-4. In response, the Examiner identifies that the claim term self expression to be such that “a person passing by or otherwise looking at the user could easily see the text or image that appears on the display.” Answer 16. Appellant has not identified error in this claim interpretation and we find that the Examiner’s interpretation is consistent with the Specification. Given this interpretation, we are not persuaded by Appellant’s arguments that Morton’s device does not exhibit self-expression, as it displays medical information. Appellant has not shown that the information displayed by Morton is inconsistent with the definition of self-expression information. We further note that whether a display allows a person to self-express himself is a subjective term that is non-functional descriptive material and as such will not define the claimed invention over the prior art.

Appellant’s arguments directed to the two issues, have not persuaded us of error in the rejection of claims 1 through 6, 8 through 16, 23, and 24 under 35 U.S.C. § 103(a) based upon Kanesaka in view of Marshall and Morton. Accordingly, we sustain the Examiner’s rejection of these claims.

*Rejection of claims 17, 18, 22, 25, and 26 under 35 U.S.C. § 103(a) based on Marshall in view of Kanesaka and Morton*

Appellant’s arguments directed to this rejection on page 8 of the Brief raise the same issues as discussed above with respect to claim 1. As discussed above, Appellant’s arguments directed to the rejection of claim 1 have not persuaded us of error. Accordingly, we sustain the Examiner’s rejection of these claims.

*Rejection of claim 7 under 35 U.S.C. § 103(a) based on Kanesaka in view of Marshall, Morton and Adams*

Appellant's arguments directed to this rejection on page 7 of the Brief, assert that claim 7 is allowable as it is based upon claim 1. As discussed above, Appellant's arguments directed to the rejection of claim 1 have not persuaded us of error. Accordingly, we sustain the Examiner's rejection of claim 7.

*Rejection of claims 19 through 21 under 35 U.S.C. § 103(a) based upon Kanesaka in view of Marshall, Morton, and Mackey.*

Appellant's arguments directed to this rejection on page 8 of the Brief, assert that claims 19 through 21 are allowable as it is based upon claim 7. As discussed above, Appellant's arguments directed to the rejection of claim 7 have not persuaded us of error. Accordingly, we sustain the Examiner's rejection of claims 19 through 21.

### CONCLUSION

We will sustain the Examiner's rejections of claims 1 through 26 under 35 U.S.C. § 103(a).

### ORDER

The decision of the Examiner to reject claims 1 through 26 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).



AFFIRMED

ELD

WARE FRESSOLA VAN DER SLUYS & ADOLPHSON, LLP  
BRADFORD GREEN, BUILDING 5  
755 MAIN STREET, P O BOX 224  
MONROE, CT 06468